

SS30. Misbranding of macaroni. U. S. v. 19 Cases of Macaroni. Default decree of condemnation. Product ordered delivered to a public institution.
(F. D. C. No. 15824. Sample No. 24223-H.)

LABEL FILED: On or about April 3, 1945, Eastern District of Texas.

ALLEGED SHIPMENT: On or about February 19, 1945, by the Shreveport Macaroni Manufacturing Co., Shreveport, La.

PRODUCT: 19 cases, each containing 48 6-ounce packages, of macaroni at Texarkana, Tex.

LABEL, IN PART: "Two Stars Brand * * * Macaroni."

NATURE OF CHARGE: Misbranding, Section 403 (e) (2), the product was a food in package form, and it failed to bear a label containing an accurate statement of the quantity of the contents, since the packages contained less than the declared weight.

DISPOSITION: May 11, 1945. No claimant having appeared, judgment of condemnation was entered and the product was ordered delivered to a public institution.

MISCELLANEOUS CEREAL PRODUCTS *

SS31. Action to enjoin and restrain the interstate shipment of popped popcorn. U. S. v. Howard Davis (Better Taste Popcorn Co.). Tried to the court. Injunction granted. (Inj. No. 108.)

COMPLAINT FILED: On or about October 3, 1945, Southern District of Indiana, against Howard Davis, doing business as the Better Taste Popcorn Co., at Anderson, Ind. The complaint charged that for a long time past the defendant had been and was still manufacturing, selling, and shipping in interstate commerce substantial amounts of popped popcorn which was prepared with and contained artificially colored nonnutritive mineral oil, and which was adulterated and misbranded.

NATURE OF CHARGE: Adulteration, Section 402 (a) (1), the popcorn bore and contained 26 to 47 percent of added mineral oil, a deleterious substance which might have rendered it injurious to health; Section 402 (b) (1), a valuable constituent, edible oil, had been in whole or in part omitted from the article; Section 402 (b) (2), popcorn containing artificially colored nonnutritive mineral oil had been substituted in whole or in part for popcorn containing edible oil; Section 402 (b) (3), inferiority had been concealed by the addition of artificially colored nonnutritive mineral oil; and, Section 402 (b) (4), artificially colored nonnutritive mineral oil had been added to the article, or mixed or packed with it, so as to reduce its quality or strength and make it appear better or of greater value than it was.

Misbranding, Section 403 (a), the labeling of the article was false and misleading since the name "Popcorn" and the words "Ingredients: Edible Oil," borne on the label, represented that the article contained edible oil.

PRAYER OF COMPLAINT: That the defendant be restrained and enjoined during the pendency of the action, and permanently, from (1) shipping in interstate commerce articles of food made and prepared from popped popcorn and containing as an ingredient mineral oil or other inedible oil; and (2) from shipping in interstate commerce any such article of food the labeling of which represented the same to be popcorn and which represented that it contained edible oil as an ingredient.

DISPOSITION: On November 1, 1945, a request for a temporary restraining order having been previously denied, the case came on for trial before the court on the issue of granting a permanent injunction, and at the conclusion of the trial, which occurred on the same day, the case was taken under advisement by the court. On December 26, 1945, after consideration of the evidence and the briefs and arguments of counsel, the court handed down the following findings of fact and conclusions of law:

SPECIAL FINDINGS OF FACT

BALTZELL, District Judge: "Pursuant to Rule 52 of the Rules of Civil Procedure, the Court now states its Special Findings of Fact (hereby adopting the Stipulation of Facts of the parties as such Special Findings of Fact), as follows, to wit:

1.

"That the defendant, Howard Davis, is a sole trader, doing business under the firm name and style of Better Taste Popcorn Company and that his prin-

* See also Nos. 8818, 8953.